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No. 93-1922

In The

Supreme Court of the United States

October Term, 1994

STATE OF MARYLAND,

Petitioner,

v.

DERRICK WENZELL SIMMONS,

Respondent.

Petition For A Writ Of Certiorari To The Court Of Appeals Of Maryland

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER THE MARYLAND COURT OF APPEALS PROPERLY RULED THAT THE ADMISSION OF A NON-TESTIFYING CODEFENDANT'S WRITTEN CONFESSION INCULPATING THE RESPONDENT WAS ERROR?

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STATEMENT OF JURISDICTION

The Petitioner has requested that this Court "grant the petition for writ of certiorari, vacate the judgment of the Court of Appeals of Maryland, and remand for reconsideration in light of *Williamson v. United States*, No. 93-5256." Petition for a writ of certiorari 9 (Pet.cert.). The petition was filed before *Williamson v. United States*, No. 93-5256 (June 27, 1994) was decided. *Williamson* decided an issue of federal law under the Federal Rules of Evidence and did not reach the issue raised by the Petitioner under the Confrontation Clause. The Federal Rules of Evidence do not apply in state court. The Court has jurisdiction to consider the Confrontation Clause issue

pursuant to 28 U.S.C. § 1257(a). The Court has no jurisdiction to consider whether Maryland should follow *Williamson*.

STATEMENT OF THE CASE

The Respondent, Derrick Wenzell Simmons, was convicted by a Prince George's County jury of robbery with a deadly weapon, use of a handgun in the commission of a felony, robbery, and burglary.[1] Simmons received three concurrent sentences of twenty years with all but nine years suspended, followed by five years probation.

Simmons appealed to the Maryland Court of Special Appeals. The Maryland Court of Appeals on its own motion issued a writ of certiorari and reversed. The court held the trial court erroneously admitted in evidence the written confession of a nontestifying codefendant which inculpated the Respondent, in violation of the Confrontation Clause of the Sixth and Fourteenth Amendments and Article 21 of the Maryland Declaration of Rights.

The testimony showed that on May 17, 1990 and into the early morning hours of May 18, 1990, Misharah Coleman, her mother, Earline Coleman, and other family members were at their home on 211 N. Huron Dr., Forest Heights, Maryland. At approximately 11:48 p.m., four individuals arrived at the Coleman's home. One of them knocked on the door. Shortly thereafter they came into the home and forced the Colemans into a rear bedroom at gunpoint.

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[1] The petition for a writ of certiorari misspelled the Respondent's name as "Derrick Wendell Simmons."

One of the individual suspects was wearing a dark blue ski mask. Misharah Coleman and Earline Coleman indicated that the only portion of the masked suspect's face that could be seen was around his eyes and mouth, because the mask was somewhat loose fitting. Misharah Coleman stated that at some point the masked suspect and another suspect left the room and upon their return, the masked suspect did not have his mask down for a period of approximately three to four seconds. At that point, she testified she was able to observe his face. Earline Coleman testified that although she was in the room with her daughter, she never saw the mask removed. She also never identified the defendant in court.

Misharah Coleman indicated that sometime after the incident, she viewed her 1989 yearbook for Friendly High School at her home and recognized the Respondent as the man wearing the mask. She further testified that in her senior year she was involved in a work/study program and ordinarily attended school between the hours of 7:50 a.m. to 12:30 p.m. and then went to her job. According to Misharah Coleman, she had observed Simmons three to four times a week around the halls of the school, but she did not know him and did not recognize him until looking at the yearbook. She admitted during cross-examination that she had never been introduced to him or even participated in a conversation with anyone while he was present. Later, during the defense case, Rodney Smith, a friend of Simmons, and Clyde Simmons, the Respondent's father, revealed that in 1989 Derrick Simmons attended Gwenn Park High School in the morning hours and Friendly High School in the afternoon, the

opposite time that Misharah Coleman attended Friendly High School.

The State, out of the presence of the jury, attempted to call Marquette Coley, a codefendant who had previously pleaded guilty and had been sentenced. Coley refused to testify, notwithstanding that he had previously been held in contempt in a prior trial of the case at bar. The prior trial had been declared a mistrial because the jury was unable to reach a verdict.

The State, having received advance notice that Coley would refuse to testify, had advised the trial court, out of the presence of the jury, that it intended to offer Coley's written statement inculpating the defendant through the police officer who obtained it. The Respondent's objection that it was hearsay and that it violated the defendant's right to confront his accusers guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution was overruled.

Detective Kenneth O'Berry testified over the renewed objection of counsel, and Coley's statement was admitted. According to Coley's written confession, he participated in a residential armed robbery because it was "easy" and in response to "peer pressure." He said he did not have a gun and did not know that anything was taken in the robbery. He implicated the Respondent, Derrick Simmons, only after the police indicated that they already knew about Simmons' involvement. Coley refused to provide any names the police did not already have. Pet.cert. 33a-36a.

The defense presented the testimony of Rodney Smith as part of an alibi defense, and Smith testified that Simmons was with him at the time the offense was committed waiting to get a flat tire fixed. Additionally, Earline Wright, Smith's mother, corroborated Smith's testimony that he called her. She further stated that she heard Derrick Simmons' voice in the background and saw a flat tire in Rodney's car the next day. Clyde Simmons, the Respondent's father, testified that he received a phone call at approximately 11:30 p.m. on the night in question when he learned his son had a flat tire.

Before the Maryland Court of Appeals, the Respondent argued, as at trial, both that the codefendant's written confession was inadmissible because it was not shown to be a declaration against penal interest and because the admission of the statements violated the state and federal Confrontation Clause. The Maryland court decided the Confrontation issue only. It said:

> [A]lthough the trial court and the state were of the view that Coley's statement was against his penal interest while Simmons believed that it was not, we need not decide whether it did or did not meet the stringent test set out in *Standifur* which must be established by the proponent to qualify a statement as a declaration against penal interest. *See State v. Standifur*, 310 Md. at 17, 526 A.2d 955 (1987).

Simmons v. State, 333 Md. 547, 561, 636 A.2d 463, 470 (1994); Pet.cert. 1a, 14a. The opinion went on to note that since the State conceded, and the court agreed, that the declaration against penal interest was not a firmly rooted

hearsay exception, that there were insufficient particularized guarantees of trustworthiness to justify the statement's admission under the Confrontation Clause. *Id.* Given Simmons' alibi defense and impeachment of the identification, the Court of Appeals agreed with the State's concession of harmful error and reversed the convictions. *Id.* at 564-65, 636 A.2d at 471-72; Pet.cert. 18a-19a.

REASONS FOR DENYING THE WRIT

THE MARYLAND COURT OF APPEALS PROPERLY RULED THAT THE ADMISSION OF A NON-TESTIFYING CODEFENDANT'S WRITTEN CONFESSION INCULPATING THE RESPONDENT WAS ERROR.

I. THIS CASE IS NOT WORTHY OF REVIEW SINCE THE PORTIONS OF THE NON-TESTIFYING CODEFENDANT'S WRITTEN CONFESSION TO POLICE THAT INCULPATE THE RESPONDENT ARE COLLATERAL AND NON-SELF-INCULPATORY AS TO THE DECLARANT AND WOULD NOT BE STATEMENTS AGAINST PENAL INTEREST UNDER MARYLAND LAW, IN LIGHT OF *WILLIAMSON V. UNITED STATES*.

In this case, the Petitioner would like this Court to hold that the Confrontation Clause allows the admission into evidence of a nontestifying codefendant's written confession to police which directly inculpated the Respondent. There is little doubt that the Maryland court would follow this Court's recent opinion in *Williamson v. United States*, No. 93-5256 (June 27, 1994), and hold the statement inadmissible as a matter of state evidentiary

law, given the history of the declaration against penal interest in Maryland. The Maryland cases recognizing the statement against penal interest exception to the hearsay rule follow the Federal Rules of Evidence, Rule 804(b)(3). *See e.g., State v. Standifur*, 310 Md. 10, 526 A.2d 955 (1987); Petition for a writ of certiorari, at 6, n.1 (Pet.cert.).

This Court's opinion in *Williamson* distinguished between self-inculpatory statements and non-self-inculpatory collateral statements. As the Court said:

> In our view, the most faithful reading of Rule 804(b)(3) is that it does not allow admission of non-self-inculpatory statements, even if they are made within a broader narrative that is generally self-inculpatory. The district court may not just assume for purposes of Rule 804(b)(3) that a statement is self-inculpatory because it is part of a fuller confession, and this is especially true when the statement inculpates someone else.

Williamson, slip.op. at 6. The Maryland Court of Appeals agreed that Coley's confession was too unreliable to be admitted against Simmons for numerous reasons: the custodial nature of the interrogation; the non-spontaneous nature of the statement; the obvious reluctance of the declarant to speak; the declarant's bad character; the admission that he played only a minor role; the denial of knowing that the other robbers took anything; currying favor with the police by verifying Simmons' involvement; and not wanting to "snitch" on anyone. *Simmons v. State*, 333 Md. 547, 562-64, 636 A.2d 463, 470-71 (1994); Pet.cert. 15a-18a. Although this reasoning weighed against admissibility under a Confrontation Clause analysis, under Maryland evidence law as informed by *Williamson*, the

non-self-inculpatory confirmation of Simmons' identity by Coley, and perhaps even the self-inculpatory portion of the statement, given the extent to which Coley tried to minimize his own involvement, *see Williamson* (Ginsburg, J., concurring), would not qualify as a declaration against Coley's penal interest. The court's characterization of the *Standifur* test as "stringent" certainly implied the statement did not qualify as a declaration against penal interest. *Simmons*, 333 Md. at 561, 636 A.2d at 470; Pet.cert. 14a.

The Petitioner filed a petition for a writ of certiorari with this Court to take advantage of *Williamson*, hoping for a ruling that the prohibition of *Idaho v. Wright*, 497 U.S. 805 (1990), on the use of corroborating evidence to establish particularized guarantees of trustworthiness under *Ohio v. Roberts*, 448 U.S. 56 (1980), would be overruled or limited. The Confrontation Clause analysis comes after a ruling that evidence is admissible under an exception to the hearsay rule. *Id.* at 66. The Court of Appeals never ruled that the State had proven the statement admissible under any specific exception to the rule against hearsay, although the State conceded below that the statement against penal interest exception was the only applicable exception.

Since in light of *Williamson*, Coley's written confession would never be admitted under state evidentiary law, this Court's acceptance of the case would not have significance for the parties. Instead, even a change by this Court of the Confrontation Clause analysis to be used in determining the admissibility of a nontestifying codefendant's non-self-inculpatory accusation of another, after a review by the Court of Appeals of the state law issue

remaining, would eventually yield the same result, a new trial for Simmons.

Moreover, any holding by this Court with respect to the Confrontation Clause would of necessity be advisory and in the nature of a hypothetical opinion. That is because in this case there is no hearsay exception under which Coley's confession fits. If the Court wants to revisit over twenty-five years of Confrontation Clause jurisprudence holding that such uncross-examined codefendant's statements are inherently unreliable, *e.g. Douglas v. Alabama*, 380 U.S. 415 (1965); *Bruton v. United States*, 391 U.S. 123 (1968); *Lee v. Illinois*, 476 U.S. 530 (1986); *Cruz v. New York*, 481 U.S. 186 (1987), it would be appropriate first for some legislature or other rule making body to provide for their admission under the applicable rules of evidence, and then for some court to actually hold that the new hearsay exception permits the admission of the evidence. As this Court noted in *Wright*, the Confrontation Clause acts in criminal cases to limit the admission of some hearsay evidence which would otherwise be admissible under an exception to the rule against hearsay. 497 U.S. at 814.

The Maryland Court of Appeals apparently felt it unnecessary to decide the evidentiary issue because it felt the resolution of the confrontation issue was obvious. For all intents and purposes, *Williamson* resolved the issue the Maryland court passed over, favorably to the Respondent. For this reason the Court should deny the petition for a writ of certiorari.

II. THIS CASE IS NOT WORTHY OF REVIEW BECAUSE *IDAHO V. WRIGHT* WAS PROPERLY DECIDED AND BECAUSE THE CORROBORATING EVIDENCE IN THIS CASE IS NOT TRULY INDEPENDENT OF THE CODEFENDANT'S STATEMENT.

A. *Idaho v. Wright* was properly decided and applies to codefendant confessions.

This Court has consistently and repeatedly recognized the presumptive unreliability of a codefendant's uncross-examined confession to police which inculpates a defendant. *Douglas v. Alabama*, 380 U.S. 415 (1965); *Bruton v. United States*, 391 U.S. 123 (1968); *Lee v. Illinois*, 476 U.S. 530 (1986); *Cruz v. New York*, 481 U.S. 186 (1987). This Court said:

> Not only are the incriminations devastating to the defendant but their credibility is inevitably suspect, a fact recognized when accomplices do take the stand and the jury is instructed to weigh their testimony carefully given the recognized motivation to shift blame to others. The unreliability of such evidence is intolerably compounded when the alleged accomplice, as here, does not testify and cannot be tested by cross-examination. It was against such threats to a fair trial that the Confrontation Clause was directed.

Bruton v. United States, 391 U.S. 123, 136 (1968) (footnote omitted). Even the dissenting opinion by Justice White in *Bruton* agreed that "[a]s to the defendant, the confession of the codefendant is wholly inadmissible," that "the statements of a codefendant have traditionally been viewed with special suspicion," and that as codefendant's

confessions are less reliable than ordinary hearsay as to the defendant. 391 U.S. at 141-42 (White, J., dissenting) (citations omitted).

In *Lee*, the Court said:

> We reject Respondent's categorization of the hearsay involved in this case as a simple "declaration against penal interest." That concept defines too large a class for meaningful Confrontation Clause analysis. We decide this case as involving a confession by an accomplice which incriminates a criminal defendant.

Lee, 476 U.S. at 544, n. 5.

The Court also stated:

> The true danger inherent in this type of hearsay is, in fact, its selective reliability. As we have consistently recognized, a codefendant's confession is presumptively unreliable as to the passages detailing the defendant's conduct or culpability because those passages may well be the product of the codefendant's desire to shift or spread the blame, curry favor, avenge himself, or divert attention to another.

Id., 476 U.S. at 545.

In the case of *Ohio v. Roberts*, 448 U.S. 56 (1980), the Supreme Court formulated a test for determining whether the admission of hearsay evidence violates the Confrontation Clause.

The Court's opinion stated:

> In sum, when a hearsay declarant is not present for cross-examination at trial, the Confrontation Clause normally requires a showing that he is

> unavailable. Even then, his statement is admissible only if it bears adequate "indicia of unreliability." Reliability can be inferred without more in a case where the evidence falls within a firmly rooted hearsay exception. In other cases, the evidence must be excluded, at least absent a showing of particularized guarantees of trustworthiness.

Id. at 66. The *Roberts* test retains its authority as the "general approach" for determining whether the admission of hearsay violates the Confrontation Clause. *Idaho v. Wright*, 497 U.S. 805, 814 (1990).

In *Wright*, this Court decided that the admission of unsworn statements of a three year old child to a doctor under Idaho's residual hearsay exception violated the Confrontation Clause. When the proffered statement falls under a hearsay exception that is not firmly rooted, the Court indicated the inquiry to determine the existence of particularized guarantees of trustworthiness is independent of any other evidence admitted at trial and is limited to "the circumstances that surround the making of the statement and render the declarant particularly worthy of belief," sufficient to rebut the presumptive unreliability of such statements. *Id.* at 819. The Court said:

> the use of corroborating evidence to support a hearsay statement's "particularized guarantees of trustworthiness" would permit admission of a presumptively unreliable statement by bootstrapping on the trustworthiness of other evidence at trial, a result we think at odds with the requirement that hearsay evidence admitted under the Confrontation Clause be so trustworthy that cross-examination of the declarant would be of marginal utility.

Id. at 823. In indicating its rejection of a rule allowing corroboration of a proffered statement with other independent evidence in the case, the Court suggested that corroboration with other evidence, such as in the case of interlocking confessions, is more appropriately considered in connection with harmless error analysis. *Id.* at 823-24. In light of the "suggestive manner" in which the doctor had conducted the interviews of the children and other circumstances in *Wright*, *id.* at 826, the Court held that the State had failed to meet its burden of proving the statements possessed "particularized guarantees of trustworthiness."

The State below conceded, and the Maryland Court of Appeals agreed, that the declaration against penal interest is not a "firmly rooted" exception to the hearsay rule. *Simmons*, 333 Md. at 561, 636 A.2d at 470; Pet.cert. 14a. Therefore, Coley's statement is only admissible if the Petitioner can demonstrate particularized guarantees of trustworthiness that assure the reliability of the statement. *Roberts*; *Wright*.

As *Idaho v. Wright* makes clear, the determination of whether a statement bears sufficient particularized guarantees of trustworthiness requires a consideration of all of the circumstances under which the statement was made. The Maryland court had little difficulty concluding under *Wright* that Coley's statement was not reliable. *See Simmons*, 333 Md. at 561, 636 A.2d at 470; Pet.cert. 14a. The State objects to *Wright*'s prohibition on consideration of corroborating evidence and, hence, the Maryland court's failure to consider Misharah Coleman's questionable identification of Simmons in deciding whether

Coley's statement contains particularized guarantees of trustworthiness.

The *Wright* Court properly ruled that a court should not consider corroborating evidence to determine the admissibility of presumptively unreliable hearsay. Since the corroborating evidence should be independent of the hearsay statement, it is not relevant to the Confrontation Clause inquiry. The Confrontation Clause inquiry focuses on the statement's reliability in the absence of cross-examination. The focus is therefore on areas upon which the declarant could be questioned. Corroborating evidence would normally be beyond proper cross-examination of the declarant.

For example, in this case, the codefendant Coley could not answer any questions about the reliability of the identification. The presence or absence of the identification does not add to or detract from the reliability of Coley's statement for purposes of admissibility under the Confrontation Clause. Even if every eyewitness denied Simmons participated in the robbery, it would not affect the admissibility of a hearsay statement which was sufficiently reliable under *Roberts*. Of course, once admitted, the jury may consider the statement together with the corroborating evidence or lack thereof to determine the ultimate issue of guilt.

The State gave a number of reasons below why *Idaho v. Wright*'s prohibition on the use of corroborating evidence should be overruled. They are that *Wright*'s applicability to codefendant confessions was "dicta by a bare majority," over a strong dissent, and inconsistent with

two codefendant confession cases, *Lee v. Illinois*, 476 U.S. 530 (1986) and *Cruz v. New York*, 481 U.S. 186 (1987). *Simmons*, 333 Md. at 561-62, 636 A.2d at 470; Pet.cert. 15a. Although *Wright* was a child abuse case, and specifically addressed a residual hearsay exception, *Wright* did not purport to distinguish among different types of non-firmly rooted hearsay exceptions in its setting forth its clarification of the *Roberts* test. The *Wright* Court has already rejected the argument that *Lee* and *Cruz* had allowed the use of corroborating evidence to establish particularized guarantees of trustworthiness. *Wright*, 497 U.S. at 823, n.*, 824. Both the majority and dissent in *Wright* at least appeared to agree that the same test should apply to different classes of non-firmly rooted hearsay exceptions. The *Wright* majority's as well as the dissent's references to *Lee* and *Cruz* strongly implied that the same rule should apply to codefendant statements.

Moreover, to set different tests for trial courts to determine the existence of particularized guarantees of trustworthiness could make application of these rules unnecessarily confusing. Given this Court's consistent rejection of uncross-examined codefendant confessions, they stand alone, as probably the most unreliable of all classes of hearsay. There is therefore no reason to establish a test under the Confrontation Clause that would make it easier to admit codefendant confessions than other kinds of hearsay under other non-firmly rooted exceptions to the rule against hearsay.

To the contrary, given the tenuous history of uncross-examined custodial codefendant confessions, this Court should reaffirm that statements, like Coley's, containing actual evidence that the declarant minimized his own

culpability, are *per se* inadmissible. Concededly, both *Lee* and *Cruz* contained *dicta* suggesting that interlocking confessions are relevant to reliability. *Lee*, 476 U.S. at 545 ("[i]f these portions of the codefendant's purportedly interlocking statement which bear to any significant degree are not thoroughly substantiated by the defendant's own confession . . . "); *Cruz*, 481 U.S. at 192 ("what the 'interlocking' nature of the codefendant's confession pertains to is not its *harmfulness* but rather its *reliability* . . . "). The same language in *Lee* has been cited to support the proposition that such confessions are not *per se* inadmissible. *See New Mexico v. Earnest*, 477 U.S. 648, 649 (1986) (Rehnquist, J., concurring) (quoting *Lee* and arguing that *Roberts* "did establish that a lack of cross-examination is not necessarily fatal to the admissibility of evidence under the Confrontation Clause"). In *Wright*, this Court emphatically rejected the language in *Lee* and *Cruz*. *See Wright*, 497 U.S. at 823, n.* (stating that language in *Cruz* suggesting that interlocking confessions may be used to establish the reliability of a codefendant's confession had been "taken out of context"), at 824 (clarifying *Lee*). There is therefore no reason not to strictly adhere to:

> the time-honored teaching that a codefendant's confession inculpating the accused is inherently unreliable, and that convictions supported by such evidence violate the constitutional right of confrontation.

Lee, 476 U.S. at 546.

For all of these reasons, the Maryland Court of Appeals was correct to reject the Petitioner's attack on

Wright. *Simmons*, 333 Md. 547, 561-62, 636 A.2d 463, 470; Pet.cert. 14a-15a.

B. If *Idaho v. Wright* is to be revisited, the corroborating evidence, unlike in this case, should be truly independent of the codefendant's statement; here, instead, the police gave the codefendant the Respondent's name first.

The Petitioner is seeking to have this Court reconsider its prohibition in *Idaho v. Wright*, 497 U.S. 805 (1990), on the use of corroborating evidence to establish particularized guarantees of trustworthiness under the Confrontation Clause. In this case, however, the corroborating evidence, i.e. the identification of Simmons by a State's witness, is not truly independent of the codefendant's statement. The police developed the Respondent as a suspect in this case as a result of an identification by one of the victims, Misharah Coleman. Evidence was adduced by the Respondent at trial that undermined the reliability of the identification: the difference in times the witness and Respondent attended school; the other witness' testimony that she did not see the masked man remove the mask; and the Respondent's alibi. As a result of the questionable identification, when the police interrogated Marquette Coley, the police told Coley that they already knew Simmons was involved. All Coley did was to confirm Simmons' identity for police, saying, "I don't want to snitch on someone you already know the other guys and I don't want to snitch on anyone." Pet.cert. 35a. Coley refused to give the police any new names.

The Petitioner wants this Court to hold that the questionable identification, that led to the police question, that resulted in Coley's answer, should be allowed to bolster the reliability of the answer. The Petitioner further wants this Court to hold that consideration of the questionable identification would tip the scale in favor of the State, to overcome the presumed unreliability of the statement. Coley's written accusation against Simmons is nothing more than the questionable identification in disguise, uttered back to police by Coley while he was obviously under pressure to give some kind of statement. By creating a fiction that the identification is independent of Coley's statement, the Petitioner would have this Court give the identification twice the weight it deserves in deciding the reliability of Coley's statement.

This case would arguably be far different if the codefendant, without any prompting on the part of police, had spontaneously provided the name of the defendant, who the police had already been investigating, and the source of the police information was totally independent of the codefendant. Since Coley did not give the police Simmons' name first, even assuming that corroborating evidence were relevant to the statement's reliability, the identification cannot possibly bolster the reliability of this statement.

When the identification is considered along with the many reasons given by the Court of Appeals for rejecting the statement, the statement is still just as unreliable: it was made while Coley was in custody accused of committing a serious crime; it expressly minimizes Coley's conduct; it was non-spontaneous; it was obviously made reluctantly; he claimed he committed the robbery because

it was easy; he denied knowing that anything was taken; he curried favor with the police by verifying Simmons' involvement; and he refused to "snitch" on anyone. *Simmons*, 333 Md. at 562-64, 636 A.2d at 470-71; Pet.cert. 15a-18a.[2]

This statement contains actual evidence of many of the circumstances that have presumptively made codefendants' confessions inculpating another the most suspect of all classes of hearsay. Of all the codefendant confessions considered by this Court, for the reasons given above, Coley's confession in this case must be among the least reliable. Even with corroborating evidence considered, the statement would not possess particularized guarantees of trustworthiness. If the Confrontation Clause permits admission of Coley's statement against Simmons in this case, it is hard to imagine an uncross-examined codefendant's confession that would not be admissible.

Because the corroborating evidence here is not truly independent of the codefendant's statement, if this Court is inclined to revisit *Wright*, this is a poor case to do so.

CONCLUSION

Since the Maryland Court of Appeals would follow the opinion in *Williamson v. United States*, excluding the

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[2] Additionally, since the codefendant is unavailable, the defendant is effectively precluded from introducing evidence to controvert the officer's testimony with respect to voluntariness and *Miranda v. Arizona*, 384 U.S. 436 (1966).

codefendant's statement inculpating the Respondent on evidentiary grounds, and since the corroborating evidence the Petitioner would have the Court weigh to determine the statement's reliability is not truly independent of the statement, this case is not in a proper posture for the Court to address the issue posed by the Petitioner, i.e. whether this Court should overrule or limit *Idaho v. Wright*'s prohibition on the use of corroborating evidence to determine the reliability of a statement admitted under a non-firmly rooted exception to the rule against hearsay. Additionally, codefendant confessions are inherently unreliable as to the defendant. The Maryland Court of Appeals properly ruled that the admission of a non-testifying codefendant's written confession inculpating the Respondent was error. For those reasons, the Respondent requests this Court to deny the petition for a writ of certiorari.

Respectfully submitted,

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